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BUCHANAN, LANCE BELL, FERNANDO
7 REALYVASQUEZ, NICK BARSETTI and
DOMINIC ALBANESE

UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 GREGORY SAULSBURY, SR.,
12 individually, and as joint
13 personal representative of the
Estate of the decedent, GREGORY
SAULSBURY, Jr.; et al.,

CASE NO. C-05-01471 MJJ

**STIPULATION REGARDING
CONFIDENTIALITY AND FOR
PROTECTIVE ORDER**

Plaintiffs,

V.

CITY OF PACIFICA, a municipal corporation; *et al.*,

Defendants.

19 **IT IS HEREBY STIPULATED** by and between the **PARTIES** hereto,
20 through their respective counsel of record, as follows:

21 1. Information and Matters Subject to this **ORDER**. This
22 stipulation and order (hereafter "**ORDER**") shall govern all
23 "**CONFIDENTIAL INFORMATION**" (as defined hereafter) and all
24 information derived therefrom, including, but not limited to, all
25 copies, excerpts or summaries thereof. All references herein to
26 "**PARTIES**" shall include all **PARTIES** and counsel of record in the
27 above-entitled action.

1 2. Definitions. The following definitions shall apply in
2 the construction and application of this **ORDER**.

3 a. The term "**INFORMATION**" means any materials, as defined
4 by Federal Rule of Evidence 1001, or materials produced by the
5 **PARTIES** or any person or entity subject to their employ or
6 control in conjunction with this proceeding, including, but not
7 limited to, (1) documents produced pursuant to requests under
8 Federal Rule of Civil Procedure 34, (2) documents produced
9 pursuant to subpoena, (3) documents produced voluntarily or in
10 response to informal request, and (4) answers to deposition
11 questions set forth in deposition transcripts.

12 b. The term "**CONFIDENTIAL**" means any **INFORMATION** designated
13 as **CONFIDENTIAL** by the **PARTIES**. Only the following **INFORMATION**
14 may be so designated:

15 (1) All **INFORMATION** regarding medical records, personnel
16 records, employment files, performance evaluations,
17 physical/mental evaluations, disciplinary action, citizen
18 complaints, internal affairs investigations, and all other
19 employment-related writings regarding any employee of the City of
20 Pacifica produced or otherwise obtained in this action;

21 (2) All **INFORMATION** regarding policies, procedures,
22 manuals, and other documents regarding personnel practices of the
23 City of Pacifica produced or otherwise obtained in this action;
24 and

25 (3) Any other **INFORMATION** stipulated to by the **PARTIES**.

26 C. The term "**QUALIFIED PERSONS**" means (1) the Presiding
27 Judge and any of his or her staff, (2) any referee appointed by a

1 judge in this matter to preside over any hearings in this matter
 2 and any of his or her staff, (3) a jury empanelled for trial, (4)
 3 stenographic reporters engaged in these proceedings as are
 4 necessarily incident to the preparation for trial and/or trial of
 5 this action, (5) counsel for the **PARTIES** in this litigation, (6)
 6 paralegal, stenographic, clerical, and secretarial personnel
 7 employed by counsel for the **PARTIES**, (7) The **PARTIES** to these
 8 proceedings, including their officers, directors, agents, and
 9 employees, and (8) any person employed by counsel for the **PARTIES**
 10 in this proceeding to assist such counsel in this proceeding,
 11 such as experts or other consultants.

12 d. The term "**DISCLOSE**" or any version thereof means to
 13 show, give, make available, or communicate in any fashion to any
 14 person any **CONFIDENTIAL INFORMATION**, information concerning the
 15 existence or content of any **CONFIDENTIAL INFORMATION**, or any
 16 copy, portion, version, or summary of any **CONFIDENTIAL**
 17 **INFORMATION**.

18 3. Use of CONFIDENTIAL INFORMATION. **CONFIDENTIAL**
 19 **INFORMATION** shall be used solely in connection with, and only as
 20 necessary to, this action and the preparation and trial of this
 21 action, or any related proceeding, including, but not limited to,
 22 appeal or writ, and not for any other purpose, including, without
 23 limitation, any civil, criminal, administrative, or personal
 24 purpose or function. **CONFIDENTIAL INFORMATION** shall not be
 25 **DISCLOSED** to anyone other than **QUALIFIED PERSONS** and shall not be
 26 **DISCLOSED** except in accordance with this **ORDER**. Control and
 27 distribution of all **CONFIDENTIAL INFORMATION** shall be the

1 responsibility of the attorneys of record and the **PARTIES**. The
 2 provisions of this **ORDER**, insofar as they restrict the
 3 communication and use of **CONFIDENTIAL INFORMATION** produced
 4 hereunder, copies of summaries thereof, or information obtained
 5 therefrom, shall continue to be binding after the conclusion of
 6 this action.

7 4. Designation of INFORMATION as CONFIDENTIAL. In the
 8 preparation for any trial of this proceeding, and any appeal or
 9 writ taken herein, **CONFIDENTIAL INFORMATION** shall be designated
 10 in the following manner:

11 a. **INFORMATION** shall be designated as **CONFIDENTIAL** only
 12 after a bona fide and good faith determination by the producing
 13 party that the material contains **CONFIDENTIAL INFORMATION** as
 14 defined herein, the **DISCLOSURE** and use of which would be
 15 detrimental to or invade the privacy of the producing party.

16 b. Any information sought to be protected is properly
 17 subject to protection under FRCP Rule 26(c), and counsel shall
 18 not designate any discovery material **CONFIDENTIAL** without first
 19 making a good faith determination that protection is warranted.

20 c. Any party seeking protection under FRCP Rule 26(c) has
 21 the burden of proof to show that such protection is warranted.

22 d. The designation of **INFORMATION** as **CONFIDENTIAL** shall be
 23 made, whenever possible prior to production, by placing or
 24 affixing on each page of such material in a manner that will not
 25 interfere with its legibility the words "**CONFIDENTIAL**," or by the
 26 designation of categories of documents as "**CONFIDENTIAL**." If
 27 such designation is not possible prior to production, the
 28

1 designation must be made by the producing party within twenty
 2 (20) days after disclosure. The **INFORMATION** shall be treated as
 3 **CONFIDENTIAL** until the twenty (20) days has elapsed. Within such
 4 twenty (20)-day period, the disclosing party must notify all
 5 **PARTIES** in writing of the precise **INFORMATION** sought to be
 6 designated as **CONFIDENTIAL**. Absent such notice, the **INFORMATION**
 7 cannot be treated as **CONFIDENTIAL**.

8 **5. DISCLOSURE of CONFIDENTIAL INFORMATION.** Each
 9 individual, other than counsel whose law firms are actual
 10 signatories to this **ORDER**, to whom **CONFIDENTIAL INFORMATION** is
 11 furnished, shown, or **DISCLOSED**, shall, prior to the time s/he
 12 receives access to such materials, be provided by counsel
 13 furnishing her/him such material a copy of this **ORDER** and agree
 14 to be bound by its terms, and shall certify that s/he has
 15 carefully read the **ORDER** and fully understands its terms. Such
 16 person must also consent to be subject to the personal
 17 jurisdiction of the United States District Court, Northern
 18 District of California, with respect to any proceeding relating
 19 to enforcement of this **ORDER**, including any proceeding relating
 20 to contempt of court. The certificate shall be in the form
 21 attached hereto. Counsel making **DISCLOSURE** to any person as
 22 described herein shall retain the original executed copy of such
 23 certificate until final termination of this case.

24 a. **DISCLOSURE During Depositions.** In the event that
 25 **CONFIDENTIAL INFORMATION** is **DISCLOSED**, revealed, utilized,
 26 examined or referred to during depositions, then only **QUALIFIED**
 27 **PERSONS**, the deponent, and the court reporter shall be present.
 28

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1 If **CONFIDENTIAL INFORMATION** is made exhibits to, or if
 2 **CONFIDENTIAL INFORMATION** is the subject of examination during, a
 3 deposition, then arrangements will be made with the court
 4 reporter to separately bind those exhibits and those portions of
 5 the transcript containing **CONFIDENTIAL INFORMATION**, and each page
 6 on which such **CONFIDENTIAL INFORMATION** appears shall be stamped
 7 with the word "**CONFIDENTIAL.**" Those exhibits and transcript
 8 portions shall be placed in a sealed envelope or other
 9 appropriate sealed container on which shall be endorsed
 10 "Saulsbury, et. al. v. City of Pacifica, et al., Confidential
 11 Pursuant to Order in Case No. C05 1471 MJJ," and a statement
 12 substantially in the following form:
 13

14 "THIS ENVELOPE IS SEALED PURSUANT TO STIPULATED PROTECTIVE
 15 ORDER OF COURT, IN "Saulsbury, et. al. v. City of Pacifica, et
al., UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF
 16 CALIFORNIA, CASE NO. C05 1471 MJJ, AND CONTAINS CONFIDENTIAL
 17 DOCUMENTS PRODUCED OR GENERATED BY PARTIES TO THE PROCEEDING. IT
 18 IS NOT TO BE OPENED, OR THE CONTENTS THEREOF TO BE DISCLOSED,
 19 EXCEPT TO QUALIFIED PERSONS AS DEFINED BY SAID ORDER."

20 Each court reporter participating in any deposition
 21 involving **CONFIDENTIAL INFORMATION** shall be informed of and
 22 provided with a copy of this **ORDER** and exhibit hereto and shall
 23 be requested to sign a copy of said exhibit. Furthermore, each
 24 court reporter participating in any deposition involving
 25 **CONFIDENTIAL INFORMATION** shall show a copy of this **ORDER** to any
 26 other person participating in the preparation of any deposition
 27 transcript and shall have such person sign a copy of said

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1 exhibit.

2 b. Papers Filed in Court. Counsel for the **PARTIES** are
 3 directed to place any documents to be filed under seal with the
 4 clerk of the court, pursuant to this **ORDER**, in an envelope
 5 containing the title of the document, marked "SEALED" and
 6 labeled:

7 "THIS ENVELOPE IS SEALED PURSUANT TO STIPULATED PROTECTIVE
 8 ORDER OF COURT, IN "Saulsbury, et. al. v. City of Pacifica, et
 9 al., UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF
 10 CALIFORNIA, CASE NO. C05 1471 MJJ, AND CONTAINS CONFIDENTIAL
 11 DOCUMENTS. IT IS NOT TO BE OPENED, OR THE CONTENTS THEREOF TO BE
 12 DISCLOSED, ABSENT FURTHER ORDER OF THE COURT."

13 Documents to be filed under seal are to be filed directly
 14 with the supervisor of the filing window. Upon failure of the
 15 filing party to so file a document under seal, the producing
 16 party may do so.

17 c. DISCLOSURE to Experts. In case of any **DISCLOSURE** to an
 18 expert, consultant, or other **QUALIFIED PERSON** under paragraph
 19 2(c) above, counsel for the disclosing party shall make
 20 reasonable efforts to ensure that the **CONFIDENTIAL INFORMATION**
 21 **DISCLOSED** is not disseminated in any form to anyone by such
 22 expert, consultant, or other **QUALIFIED PERSON** and that said
 23 **CONFIDENTIAL INFORMATION** and any copies or summaries thereof are
 24 returned in their entirety to the disclosing party after they are
 25 no longer needed in this action.

26 6. DISCLOSURE of CONFIDENTIAL INFORMATION to Other Than
 27 QUALIFIED PERSONS. In the event that any party desires

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1 **CONFIDENTIAL INFORMATION** to be **DISCLOSED**, discussed, or made
 2 available to any person other than a **QUALIFIED PERSON**, such party
 3 shall submit to opposing counsel a written statement specifically
 4 identifying the **CONFIDENTIAL INFORMATION** to be **DISCLOSED** and the
 5 name, title, and business relationship of the persons with whom
 6 they wish to communicate. Counsel for the opposing party shall
 7 have fifteen (15) calendar days from the date notice was served
 8 to object to the **DISCLOSURE** to any person identified in the
 9 notice. If the **PARTIES** are unable to agree on the terms and
 10 conditions of the requested **DISCLOSURE**, it may be made only on
 11 such terms as the Court may provide. The **PARTY** seeking
 12 disclosure may file with the Court and personally serve on
 13 opposing counsel a written motion for authority to make such
 14 **DISCLOSURE**. Ten (10) days shall be allowed to oppose or
 15 otherwise answer any such motion.

16 a. Unless opposing counsel responds timely in writing to
 17 the fifteen (15)-day notification provided for above, the persons
 18 named in the notice shall, subject to the terms and conditions of
 19 this **ORDER**, be entitled to receive only that **CONFIDENTIAL**
 20 **INFORMATION** specified in this notice.

21 7. **DISCLOSURE** to Author or Addressee. Nothing in this
 22 **ORDER** shall preclude the **DISCLOSURE** of **CONFIDENTIAL INFORMATION**
 23 to any person who authored, prepared, was an addressee of,
 24 received a copy of, or participated in the preparation of such
 25 **CONFIDENTIAL INFORMATION**.

26 8. **Objections To Designation**. Should any party to whom
 27 **CONFIDENTIAL INFORMATION** is disclosed object to classification of

1 such materials, and should the **PARTIES** be unable to resolve the
 2 objection informally, then the objecting party ("the moving
 3 party") shall have the burden of moving forward and may move, at
 4 any time upon proper notice, for an order determining whether or
 5 not the materials are properly designated. Until a motion is
 6 filed and resolved by the Court, all materials designated
 7 **CONFIDENTIAL INFORMATION** shall be treated as **CONFIDENTIAL**. In
 8 the event such a motion is made, the party opposing the motion
 9 (the "opposing party") shall have the burden of providing and
 10 establishing that the **INFORMATION** is protected as privileged
 11 within the meaning of and under applicable federal laws and the
 12 laws of the State of California. This burden, imposed on the
 13 opposing party, shall include, but shall not be limited to, the
 14 burden imposed on any party seeking a protective **ORDER**.

15 9. Objections To Production. Nothing in this **ORDER** shall
 16 be deemed to limit or waive any right of any party to object to
 17 discovery with respect to any **INFORMATION** which may be claimed to
 18 be outside the scope of discovery for any reason, privileged, or
 19 otherwise protected or protectable under applicable federal laws
 20 and the laws of the State of California

21 10. Further Protection. Nothing contained in this **ORDER**
 22 shall be deemed to preclude any party at any time (a) from
 23 seeking and obtaining from the opposing party or the Court, on
 24 appropriate showing, a further protective **ORDER** relating to
 25 **CONFIDENTIAL INFORMATION** or relating to any discovery in this
 26 case, (b) to apply to the Court for an **ORDER** requiring the
 27 removal of the **CONFIDENTIAL** designation from any document

1 pursuant to Paragraph 4 above; and (c) to apply to the Court for
 2 any relief from a provision of this Stipulation and **ORDER**, upon
 3 good cause shown. Nothing in this **ORDER** shall be construed as
 4 preventing any party from making application to the Court for
 5 revision of the terms of this **ORDER**.

6 11. Contempt. Any violation of the provisions set forth in
 7 this **ORDER** is punishable as contempt of this Court.

8 12. General Provisions.

9 a. This **ORDER** is the result of negotiations by attorneys
 10 for the **PARTIES** and shall not be construed against any party or
 11 signatory to this **ORDER** because that party or his counsel may
 12 have drafted this **ORDER** in whole or in part. This **ORDER** shall be
 13 construed and interpreted fairly in accordance with its purpose
 14 and plain meaning.

15 b. This **ORDER** shall continue to be binding after the
 16 conclusion of this litigation, except that a party may seek
 17 written permission from the opposing **PARTIES** or further **ORDER** of
 18 the Court with respect to dissolution or modification of this
 19 **ORDER**.

20 c. Within thirty (30) days after the conclusion of this
 21 case, any and all original, copy, portion, version, or summary of
 22 any **CONFIDENTIAL INFORMATION** materials in the possession,
 23 control, and/or custody of any **QUALIFIED PERSON** shall be
 24 returned. Counsel of record for a party returning **CONFIDENTIAL**
 25 **INFORMATION** shall verify by declaration under oath that all such
 26 **INFORMATION** has been returned and that it has not retained any
 27 such **INFORMATION** or derivatives therefrom. Counsel may retain

1 copies of briefs filed with the Court and work product so long as
2 it is maintained in accordance with this **ORDER**.

3 d. Disclosure of **CONFIDENTIAL INFORMATION** shall not
4 constitute a waiver of the attorney-client privilege, work-
5 product doctrine, or any other applicable rights or privilege.

6 e. Notices pursuant to this **ORDER** shall be sent to the
7 attorneys for the **PARTIES** listed on the signature page of this
8 **ORDER** unless notified in writing of a change.

9 f. This **ORDER** shall not be admissible at the time of trial
10 and shall not constitute an admission by any of the **PARTIES** that
11 **INFORMATION** identified as **CONFIDENTIAL** is in fact confidential or
12 the subject of entitlement thereto. This **ORDER** is entered into
13 solely to expedite discovery and meet the respective concerns of
14 the **PARTIES**. This **ORDER** shall not be made known to any trier of
15 fact, nor shall it be considered an admission of validity to any
16 claim of confidentiality hereunder except as is necessary to
17 enforce the terms of the **ORDER** as provided herein.

18 g. The Court's jurisdiction to enforce the terms of this
19 order shall extend until six months after the final termination
20 of this action.

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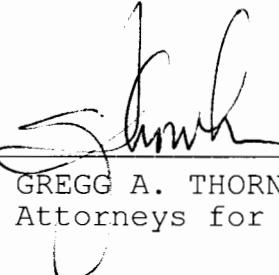
1 The above is stipulated to by the respective counsel for the
2 **PARTIES** as follows:

3 DATED: February 20, 2006 LAW OFFICES OF JOHN L. BURRIS
4

5 By: 

6
7 JOHN L. BURRIS
8 Attorneys for Plaintiffs

9 DATED: February 16, 2006 SELMAN BREITMAN LLP
10

11 By: 

12
13 GREGG A. THORNTON
14 Attorneys for Defendants

15 ORDER

16 **IT IS SO ORDERED.**

17 Dated: 4/4/2006

18 By: 

19 Hon. Martin J. Jenkins
20 United States District Judge
21 Northern District of California

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BUCHANAN, LANCE BELL, FERNANDO
7 REALYVASQUEZ, NICK BARSETTI and
DOMINIC ALBANESE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

GREGORY SAULSBURY, SR.,
individually, and as joint
personal representative of the
Estate of the decedent, GREGORY
SAULSBURY, Jr.; et al.,

CASE NO. C-05-01471 MJJ

NON-DISCLOSURE AGREEMENT RELATING
TO STIPULATION REGARDING
CONFIDENTIALITY AND FOR
PROTECTIVE ORDER

Plaintiffs,

V.

CITY OF PACIFICA, a municipal corporation; et al.,

Defendants.

I, _____, declare as follows:

1. My home address and telephone number is

2. The name, address and telephone number of my employer
is:

3. I have received a copy of the Stipulation for Protective Order and Protective Order (hereinafter the "**ORDER**") filed in the above-entitled action.

1 4. I have carefully read and understand the terms of the
2 **ORDER.**

3 5. I hereby agree to be bound by the terms of the **ORDER.**

4 6. During the pendency and after final resolution of this
5 case, I will hold in confidence and not disclose to anyone not
6 qualified under the terms of the **ORDER** any confidential writings,
7 documents, things, information, or discovery disclosed to me.

8 7. I agree to be subject to the personal jurisdiction of
9 the United States District Court, Northern District of
10 California, with regard to any proceeding relating to the
11 enforcement of the **ORDER.**

12 I declare under penalty of perjury under the laws of the
13 State of California that the foregoing is true and correct and
14 that this declaration was executed this _____ day of _____
15 (month), _____ (year), at _____ (city),
16 California.

17 DATED: _____

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